

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5941

PETITION OF MARY BALOW
(Hearing held November 26, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, February 6, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1)(2)(a). The petitioner proposes to construct an accessory structure/detached garage that requires a twenty (20) foot variance as it is within thirty-two (32) feet of the front lot line. The required front lot line setback is sixty (60) feet.

Richard Shay, an architect, appeared with petitioners James and Mary Balow at the public hearing.

The subject property is Lot 3, Block A, Wildwood Knolls Subdivision, located at 5707 Rossmoor Drive, Bethesda, Maryland, 20814, in the R-90 Zone (Tax Account No. 160700695965).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 14 x 22 foot detached garage in the eastern side yard.
2. The petitioners testified that new construction could not be built in the rear yard because an earlier addition had been added to the rear of the house. The petitioners received a variance in 1990 to construct of a covered front porch.
3. The petitioners testified that an addition could not be added at the eastern section of their home because it would block the light to the rooms in that area. The petitioners testified that the architecture of the addition would be in harmony with other homes in the neighborhood and that garages are a common structure in the neighborhood.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property and that the petitioners' lot is similar in size and shape to the other properties in the neighborhood. See, Exhibit No. 7(a) [zoning vicinity map]. The Board further finds that prior additions to the petitioners' residence limit new construction on the lot and that the requested variance is a self-created hardship.

The Board notes that new construction could be added to the property without the necessity of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of twenty-eight (28) feet from the required sixty (60) foot front lot line setback for the construction of a accessory structure/detached garage is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 6th day of February, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.